

Attorney Docket No. 43390-8001.US01

Remarks/Arguments

Claims 1-60 are pending in the application. Claims 1-60 have been rejected. Reconsideration and withdrawal of the rejections set forth in the Office Action dated July 29, 2005, are respectfully requested. The applicant petitions the Commissioner for a 2-month extension of time: a separate petition accompanies this amendment.

I. Rejections under 35 U.S.C. §112, second paragraph

Claims 48 and 58 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claims the subject matter which applicant regards as the invention.

With respect to the above rejections, the applicants note that the Examiner identified claim 47 as a rejected claim. The applicants believe the Examiner intended to reject claim 48 instead of claim 47. In accordance with the Examiner's presumed intentions, claims 48 and 58 have been amended to correct antecedent basis. No new matter has been added.

II. Rejections under 35 U.S.C. §102/103

Claims 1-24, 26-48, 52, and 55-60 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Rappaport et al. (U.S. Publication No. 2004/0259555). Claim 25 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Rappaport in view of McKenna et al. (U.S. Patent No. 6,687,498). Claims 49-51 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Rappaport in view of Forbes (U.S. Patent No. 6,512,916). Claims 53-54 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Rappaport in view of Agrawal et al. (U.S. Patent No. 6,879,812). These rejections are respectfully traversed for the following reasons.

A. The Prior Art

The Examiner relies upon Rappaport et al., either alone or in combination with another reference, to reject claims 1-60. The applicants have concurrently herewith submitted a 131 declaration in order to establish priority of invention vis-à-vis the Rappaport et al. reference. The applicants respectfully assert that, at the very least,

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overcoming the Rappaport et al. reference is sufficient to put all of the pending claims in a condition for allowance. The applicants do not provide any opinion regarding the teachings of Rappaport et al. because no such opinion is deemed necessary.

B. The 131 Declaration

The essential thing to be shown under 37 C.F.R. § 1.131 is priority of invention and this may be done by any satisfactory evidence of the fact. *MPEP 715.07*. The 131 Declaration includes a series of facts, including dates of diligent activity, along with an assertion of diligence, of character and weight sufficient to establish diligence. As with conception, the applicants have made a prima facie showing of diligence, accompanied by facts supporting the declaration.

The 131 Declaration establishes a date of invention prior to April 23, 2003. The priority date of Rappaport et al. is at best April 23, 2003. It should be noted that the priority date of Rappaport et al. could be as late as April 23, 2004, if the Rappaport et al. publication is different from the provisional application, filed on April 23, 2003, to which Rappaport et al. claims priority.

The 131 Declaration establishes diligence from before April 23, 2003 to September 17, 2003. On September 17, 2003, a patent application was filed, which is a constructive reduction to practice.

The 131 Declaration includes a table with facts corresponding to, for example, the elements of Claim 1. The applicants respectfully assert that the facts provided in the appendices of the 131 Declaration correspond to the independent claims 59 and 60, too. Claims 2-58, which depend either directly or indirectly from the independent claim 1, are allowable at least for depending from an allowable base claim.

C. The Prior Art Distinguished

All of the Examiner's rejections rely upon Rappaport et al, either alone or in combination with another reference. Since the date of conception associated with the pending claims, followed with diligence to constructive reduction to practice, is prior to the best priority date of Rappaport et al., the applicants respectfully submit that claims 1-60 are allowable over the prior art of record.

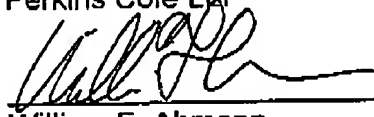
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III. Conclusion

In view of the foregoing, the applicant submits that the claims pending in the application comply with the requirements of 35 U.S.C. §112 and patentably define over the prior art. A Notice of Allowance is therefore respectfully requested.

If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is encouraged to call the undersigned at (650) 838-4300.

Respectfully submitted,
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